

LAKE COUNTY BOARD of ADJUSTMENT
March 8, 2017
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Frank Mutch, Steve Rosso, Mary Jensen

STAFF PRESENT: Jacob Feistner, Rob Edington, Wade Humphries (first two items), Lita Fonda; Wally Congdon (for part)

Frank Mutch called the meeting to order at 4:01 pm.

SPENCER CONDITIONAL USE—UPPER WEST SHORE (4:02 pm)

Steve Rosso recused himself from this item and left the room.

Wade Humphries presented the staff report. (See attachments to minutes in the March 2017 meeting file for staff report.) He mentioned another public comment received since the staff report was done, which had been handed out to the Board. (See attachments to minutes in the March 2017 meeting file for handout.)

Frank asked if the trailer was considered an RV. Wade affirmed and explained that it wasn't typical. It resembled a horse trailer. Someone injected it was a toy hauler. Wade continued that it did have adequate windows, triple-axle and 5th wheel. He hadn't seen the inside. It looked like it was habitable. Attachment 2 had pictures of the trailer.

Frank checked that the purpose was quoted on pg. 10 to protect and enhance property values and amenities. Wade said this was correct. Frank thought cleanliness was subjective and debatable.

Mary asked what buildings were pictured in attachment 4 (cont.). Wade replied the applicant was in transition from one permanent dwelling to a second, which had not yet been built. Per the applicant, those two structures housed the other items they owned. Mary inquired about the 5th wheel pictured in that attachment. The 5th wheel and the toy trailer were in essence two structures for living. Ross Spencer clarified the 5th wheel wasn't attached to the storage container although they were next to one another. Jacob clarified only the one structure was being used as a dwelling. The others were storage.

Ross Spencer said that he had family and was trying to move them here. He had a lumber mill coming and was ready to start building. The neighbors caused havoc. He'd never met them and they'd never talked to him.

Jessica Wood introduced herself as Ross's sister and neighbor. Their parents split the property for them. She'd recently completed her home. Her brother and his young family had recently moved over, lived in the trailer, had support, spent time at her house and intended to build a home. [The home] would happen. It was taking longer than they thought.

Public comment opened: None offered. Public comment closed.

Frank thought the conditions looked like they would satisfy the concerns of the neighbors.

Motion made by Frank Mutch, and seconded by Don Patterson, to approve the conditional use with condition and findings of fact as written. Mary asked when the 2 years would begin. Wade and Jacob clarified it would be from the date of the approval letter of the conditional use. **Motion carried, 3 in favor (Frank Mutch, Don Patterson, Mary Jensen).**

Steve Rosso returned to the Board table.

SERRA DETERMINATION REQUEST—UPPER WEST SHORE (4:20pm)

Wade Humphries presented the staff report. (See attachments to minutes in the March 2017 meeting file for staff report.) He stressed that this was not a subdivision review. One additional public comment had been received, which had been handed out to the Board. (See attachments to minutes in the March 2017 meeting file for handout.)

Wade reviewed the approximate lots sizes given on attachment 5. Steve touched on the 20-foot strip on the west side of the 20-acre property deeded to Lake County for right-of-way. Marc Carstens said that was the rest of the 20-acre parcel and had happened long ago. He confirmed it was no longer part of the property. Steve checked that in the applicable zoning, the amount of acreage needed was exact, without a percentage allowance to fall within. Steve read the language on density clustering, which included a commitment to put land in open space, resource use, common area or parkland. Had the applicant proposed to commit land for this? Wade said VII.A.1 didn't actually factor in to this proposal. Steve thought they were being asked to assume that it was okay for this to be approximately 20 acres to make 4 lots rather than exactly 20 acres. He felt they didn't have the room to make that decision. Per his calculation, the actual average per lot was 4.79 acres per lot rather than 5 acres. In order to do that, they'd need to use the density bonus, where 3.88 acres would need to go to open space. Then they could do this based on the letter of the regulations for a 19.16-acre lot.

Mary checked that the road easement was included to make a 10-acre parcel. Wade said that was not part of the proposal but had been brought to light. He thought they could take care of this with the density bonus without it being an issue. Jacob thought they could recommend approval in that direction based upon discussion with the land owner and agent, seeing how they would want to proceed. He agreed with Steve that they would need to designate some open space in order to get a density bonus so they could have an average lot size less than 5 acres.

Don P asked how many entries to the property existed. Wade said one current entry existed. Two were proposed from Big Lodge Road, two from Mongrain Road and none from the northern edge of the property. Those would be a portion of the subdivision

review. The [BOA] application packet submitted did show these. They'd have to get an approach permit onto a county road. Steve noted the proposed lots had frontage on county roads.

Michael Serra had no comment to add at this point. Marc Carstens, his agent, spoke about the strip of land that was signed over to the County long ago. It was a portion of the 20-acre tract. Had that strip not been dedicated to the county, the tract would have been in excess of 20 acres and this would not be a problem. Were this a full 20 acres with subdivision contemplated, they must reserve a right-of-way through the subdivision review process that would be equal in size to that which was already dedicated to the county. He suggested the intent of the law was fully met because the strip that was dedicated to the county so many years ago came off of this 20-acre parcel, thus reducing its size. If that hadn't happened, this discussion probably wouldn't be taking place. At the next meeting for this item with the Planning Board, they would be saying they would need to reserve a 30-foot wide strip off of this for the County. The property was there. It just got conveyed to the County for roadway purposes. Realizing the history of the 20-acre tract and its disposition, he didn't think they were that far off of their proposal.

Public comment opened:

Christine Cook noted that on pg. 1, the property was bordered by Big Lodge Road rather than Big Lodge Lane.

Don Mogensen owned the property to the north of Big Lodge Trail with Jo-Ann Swanson. He was concerned about the easement through his property and that the access for the proposed subdivision lots happen from the county roads rather from his property. They'd already turned down another party on that. They were also concerned about shooting on the property. Regarding the 20-foot right-of-way, when their 5-acre piece was subdivided off about 15 years ago, the County also took another 10 feet of easement at that time for Big Lodge Road. He wasn't sure if they were aware of that. He asked if another 10 feet would be taken down the county road. Steve and Frank said that would be covered with the subdivision. Don M said since they were talking about width, he thought another 10 feet of easement would come off of that.

Christine Cook described her location on Big Lodge Trail. Regarding the commercial aspect, she was under the impression that the post office would be moved to one of the 2.5-acre parcels and the other was for undesignated commercial use. This wasn't being addressed here. Her concern was that the community designed the zoning to protect the value and structures of the area. They were looking at two 2.5-acre parcels earmarked for commercial. The commercial pieces in Rollins fronted on Highway 93. Were they changing the definition of Mongrain so anything along it automatically became an unrestricted commercial area? She was amenable to having the post office moved if they wanted to do that and the 2.5-acre piece for commercial but she didn't think it was in the community's benefit to earmark property as commercial and not have it designated [for use]. It seemed to open it up for anything to go in there. If they weren't going to do commercial and if they wouldn't need the clustering, then to just have the 5, 10 and 5 wouldn't be an issue. To arbitrarily say that anything on Mongrain was commercial

because the ones across the street were commercial [didn't work for her]. They were highway frontage. In the zoning, highway frontage was a lot easier for which to get a permit or designate for a commercial aspect. Now they were talking about a road that wasn't oiled or chipped. Big Lodge Road was there because the state highway department had their building there and that made nice with the neighbors. They'd taken care of that road themselves. It mentioned it wouldn't exceed 300 visits per day. The area around the store was paved so there was no dust, dirt or mud. Now they were talking about moving it onto Mongrain, which was not highly maintained. She was confused about the reason for the clustering. They were setting a precedent unless it was specifically for a reason. Clustering was a beautiful idea to leave an open area but this wasn't that situation.

Frank reminded the scope here related to the subdivision regulations in terms of density. They weren't looking at other items such as a use. Steve explained several steps were involved. This was a beginning step to see if it would be okay to make some lots less than 5 acres. That decision had nothing to do with what would happen on the lots. Before they moved or built a post office on those lots, they would have to come to the Planning Dept. and get a conditional use. The only permitted use was single-family residential. The same thing was true with the other lot. The intention might be that it would be available for commercial use. Before someone built or did business on there, they'd have to apply for a conditional use that would be for commercial.

Christine felt the zoning should stay with single-family 5-acre pieces. Steve said that was why [the zoning] had conditional uses. In order to do something other than agriculture or single-family, you had to have a hearing like this. Christine said the owner could come back and apply to lease 2.5 acres to the postal service. Steve clarified that it was a single use per lot. If it was a 5-acre lot, the post office would have to take all 5 acres.

Robert Moore owned 55 acres across the street. The county road took out part of that land also, so he actually had 53 acres. What was wrong with 2.5 acres and with commercial? The antique store in Rollins wasn't commercial and didn't have highway frontage. It used to be a chicken ranch so it was commercial property when it was sold. He was the caretaker for it for years. Some neighbors didn't like it. Wasn't it his right to own property and do what he wanted? He thought it was crazy to have to have 5 acres per house. That was a lot of land.

Public comment closed.

Frank asked Steve if the idea of the easement on the 20 acres satisfied him. Steve said he'd like the staff to help regarding whether or not they needed to [do something with this]. A lot of the zoning district regulations had some flexibility built in. This set of zoning regulations didn't have that flexibility built in. If they assumed flexibility was there, that alleviated the issue. If they had to go by the regulations as written, they had to do some density bonus, where some open space would be committed. Wade thought the cart was ahead of the horse. If the portion hadn't been deeded, an easement along there would have been needed to add to the right-of-way. As it was, they already had the

portion of property. It would take less of an easement on the Second Step, a new subdivision in process.

Steve thought if that 20 feet hadn't been deeded to the County, the proposed lot lines would have been drawn differently. That strip would have been an easement on three of these lots. The 5 acres of lot 4 would have been narrower north to south than drawn here and the 5 acres would have included that 20 feet [of easement]. The shrinkage in lot size due to the easement would not end up all on lot three for 9.16 acres. The conditions said if this got approved, the applicants had to do what they'd drawn here so he hoped the applicants didn't have to come back to the board to move property lines to split the 20-foot deeded section up between the three lots.

Jacob and Steve discussed the open space needed if they worked with the 19.16-acre lot. Steve described his calculations. To follow the letter of the regulations, they needed to designate open space or divide this into 3 lots instead of 4. Frank suggested the county could vacate the easement. Steve noted the Serras would be paying taxes on an easement. Since it was deeded, they didn't pay taxes on it.

Don M commented that they wouldn't complain if the open space bordered their property. Marc C asked what constituted open space. Steve said parkland or whatever. It did say that it was committed as open space. Marc gave an example of designating three acres on the 9-acre tract where they would not build. What had to be done in order to call it open space? Steve thought it had to be common use for the lots in the subdivision. Marc said there were parkland dedication requirements but this didn't fit that. Steve agreed. Tiffani noted that Michael Serra planned to reside on the big lot. She didn't think he would mind having 3 acres set aside for the other lots. Steve asked if that should say 'open space' on the plat. Marc asked if they could contemplate a condition that would allow the 3 acres to exist in a place that was geographically described and subject to Planning Dept. approval. Steve thought this was possible through a condition that open space be designated in a quantity that would justify the density. Marc said the open space didn't have to be an individual lot. This could be an area overlain upon a lot. Steve said that would take some interpretation of the regulations.

Wade said that open space wasn't defined. Marc said in many places in County regulations, open space was just that: space that was not allowed to be developed upon. It wasn't something necessarily shared by the neighborhood. It restricted the ability to use the property for anything more than an open environment. Steve thought a commitment to open space would mean seeing a dashed line with a shaded area that said open space on the plat. Even though that might be part of one of the lots, if it was designated there, then it would be easily apparent for future review.

Marc wanted to explore in more depth what Michael Serra could do with the open space. For instance, could a Serra horse graze there? Steve thought probably so. Mary checked that it wasn't for a community use for the subdivision. Jacob read the definition of open space from the Lake County Subdivision Regulations. He asked if that allowed for the intentions of the landowner. Marc pointed out they hadn't had an opportunity to visit

with the land owner on this particular matter. He was concerned whether the open space could be handled in a manner that preserved the open space and the use of the land in agricultural or some other format compatible with the neighborhood but not necessarily ground on which the owner had to allow the neighbors to picnic and then go clean up after them. Frank said one provision was for private ownership. In that case, Marc thought this was very workable from their standpoint.

Frank turned to condition 1 and requirements that needed to be completed prior to the zoning conformance permit issuance. He suggested adding a possible density bonus in order to comply with the density requirements. If the Board would be comfortable with this, Jacob suggested that staff would work with the applicant's agent to arrive at the density bonus that worked with the zoning and that would work for the applicant. They could define the open use of parkland so it was with the zoning as well as the intentions of the landowner. Marc said if the open space could remain private with its usage throttled back, it would be acceptable from their standpoint. Steve said that worked for him. Jacob said they could meet the density of the zoning that way. Steve asked if this needed to be a condition. Jacob said they could condition it that *adequate open space will be set aside to meet the density bonus requirements of zoning.*

Steve asked if they needed to something for the future that prevented the less than 10-acre lot from attempts to be divided into two 5-acre lots. Jacob replied the subdivision review would take care of that. Don M asked if they could get a variance down the road to turn the 5-acre parcel that abutted his property into commercial. Jacob described that commercial would be subject to a conditional use review, so that would depend on the use. The subdivision review would designate the use of the lots as residential or commercial. Steve asked if 'highway commercial' had a definition in this set of regulations. Jacob said it wasn't in there. Steve said that was the commercial designation under conditional use. He thought it would be important to understand if highway frontage was required in order to make a lot commercial then this applicant might not get what he wanted. Jacob said that would be handled through the [inaudible] review. Michael said then they better make the state move their yard. Steve observed the state was allowed some exclusions. Michael knew. He sold them the property, which was a big mistake. Frank observed that the firearms concern was beyond the purview of this board. He suggested talking to the neighbors.

Motion made by Steve Rosso, and seconded by Don Patterson, to approve a division into 4 lots that average a little less than 5 acres with the modified conditions and the findings of fact. Motion carried, all in favor.

GALLOWAY CONDITIONAL USE—EAST SHORE (5:17 pm)

Rob Edington introduced Robin Galloway (applicant), Bob Streitmatter (significant other), Rob Smith (agent from A2Z Engineering) and Josh Smith (geotechnical engineer from CMG Engineering). He presented the staff report. (See attachments to minutes in the March 2017 meeting file for staff report.) Frank highlighted the plat Rob E prepared for the Board to clarify the lot ownerships in the area for the last two Board items. (See attachments to minutes in the March 2017 meeting file for handout.)

Steve checked that this project involved work happening on 3 different lots. Were there 25% slopes on either of the other lots or were those all on the applicant's lot? Rob E referred to attachment 10 for the breakdown of square footage of disturbance from Rob S. Steve was familiar with applications for disturbance on an applicant's property. Did the Board need applications from the north or south property owners where there would be disturbance? Both of the neighboring disturbances were under 500 square feet which meant the owner wouldn't need a conditional use permit for disturbing slope. Rob E reported that was his understanding after numerous conversations with Wally Congdon, County attorney. The permit would be for who was doing the disturbance. However, permission must be granted to disturb slopes on the neighboring property. That was more of a legal question that he wasn't qualified to answer. The neighboring owners were present. Jacob said they wanted to look at the impacts collectively so Rob E was prepared to do that. As far as needing [Board] approval, only one property exceeded the limit that would require approval.

Frank thought this looked like a road to nowhere. It seemed like it would need to be extended in two directions and other work done, which was inferred. Was [Rob E] comfortable with the inference or were more details needed? Rob E thought that was a good question for the agent. Attachment 11 had 3 photos, where he pointed out the transitions to the neighboring properties. Photo 2 also showed some of the existing disturbance.

Steve asked about the certified letter referred to in the letter handed out to the Board from Nathan Amaral. Rob E said the letter was not included after staff discussion. It was from the 2011 disturbance and they'd addressed those items. A new certified letter was issued by the Planning Dept. to revisit the violation. The new letter was not in the packet either. He didn't think they were pertinent to the Board decision. Another handout was an email [from the Treweeks] which touched on what they'd talked about, where it was the applicant's responsibility to have permission to work on the neighboring parcels. Frank asked if that was part of the Board's consideration or beyond their scope. Jacob said after the report went out, staff discussed including [another] condition. Staff weren't interested in interpreting easements or determining if easements were adequate or not. *They would like something from the interested parties that said those parties were satisfied with whatever the arrangement might be, whether it was easements or a written agreement between the neighbors, before staff issued a zoning conformance permit.* The Board could approve the slope disturbance today and [the applicants] could provide [staff] with a document that said all of the involved neighbors agreed upon whatever they agreed upon, and then staff would issue a zoning conformance permit for the work. He recommended adding this as a condition.

Rob Smith, agent from A2Z commented that he was handling the permitting end of things and the paperwork dealing with the slope disturbance. He noted that Josh Smith could answer questions on the soils or the type of walls or the boring log. He pointed to the grading plan in the packet, which showed where the new contours and new walls would be located. A main concern was if this project would help or hurt the road. He

thought a more pertinent exhibit might be one that followed the centerline of the road as it left the highway and showed what the existing road consisted of, as far as slopes and so forth, and showed the new section. He submitted an exhibit to the Board. (See attachments to minutes in the March 2017 meeting file for handout.) The yellow line showed what existed on Waterfront Lane approaching the property and where it took over in the orange was the proposed improvement. The existing road was very flat. You could assume it would be a straight line connecting the two ends of the orange.

Steve said an east-west elevation drawing or cross-section of the property was lacking. They had to interpret based on the contour lines. The Board discussed the steepness of that slope. Rob S said that was a good point and would be helpful. He reiterated that Josh could speak to the kind of retaining wall system considered. Rob S's intent in designing the improvements was to add to the road and lift it up 4 to 5 feet. That allowed for more width and less curve for a better and improved road. He offered to answer questions on the road design or permitting aspects. Steve asked about the maximum heights of the two retaining walls on the cut side and on the fill side. Rob S discussed this with him in detail. Frank assumed if they were putting in fill and raising the grade that this would resolve some connection issues. Rob S confirmed. When they applied for the permit, they wanted to show the maximum they would disturb if everything was allowed to extend beyond the property lines. If that extension wasn't allowed, they would scoot the ends of the road a little to the east so they tied into the existing. You couldn't have a big U so you would also have to pull in the lower section as well. Steve checked that the disturbed area they were requesting would allow them to pull the ends up if they didn't get the approval from the neighbors. Rob S confirmed. They would end up disturbing less area overall. Mary checked that they would bend this and tie it in to the existing road on the other neighbors' properties and connect the new to the old. Steve said they'd tie it in on this property if they couldn't agree on this project.

Frank asked if there were trailers shown on the site plan. Rob S said those were full-sized cars. You could see it was a small lot by the size of the cars.

Josh Smith, agent from CMG Engineering, spoke about the slope stability. He described how they approached this. The bottom line was they had really stiff soils there once they got through the old fill and what was placed in 2011. The goal was to take out what was done before, create a horizontal bench in the existing soil and start the wall with that. The type of wall proposed was a MSE wall (mechanically stabilized earth). He described this in more detail. They would have some definite recommendations on how to build that wall so they didn't have a problem with it sliding down the hill. Frank asked about drainage. Josh said drainage would fall onto Rob S. They would take care of subsurface drainage if water was coming through the soil. They would have a drainage layer that would take the water around the sides of the wall. Quite of bit of forest lay between the wall and the highway, if that was what Frank alluded to. After it went around the sides, Josh thought the amount would be pretty minor. They would have outflows with minor riprap to dissipate the energy and it would go into the brush. Frank asked if the highway department would be involved. Josh said they talked about a lake frontage lot but the highway was between them and the lake.

Don P asked about the problems with the old road, besides being too close to the house. Josh said from a stability standpoint, the new road would be safe. Frank said they'd be utilizing the old road too.

Bob Streitmatter said their objective was not to use the old road. When they bought in 2011, it was a quiet neighborhood with no neighbors to the south. They wanted to recreate a quiet, peaceful space that didn't have cars at all hours with headlights coming into the bedroom. The road was a driveway to a seasonal cabin. It was steep off of the driveway and dangerous to walk on. To engineer something else, they would stabilize that whole section. Wayne Treweek was really nice and allowed them to use some property initially. They felt bad because soon after they built, it was obvious it was not well built. They were gone for 4 years and it became an acrimonious situation. Frank clarified that the Treweeks were to the north. Bob S continued that Wendy Reed [Miller] had to have an easement to her property. Because the easement was technically not where it was built, they just had to provide a safe and usable road to her property. They were trying to fix a problem that had always been there but had been ignored. He and Robin built a new home, as did Wendy. The Amarals built with access expected to the south, which was another and different legal issue. Nathan didn't have an easement across their property. They hadn't denied him access. Bob S wanted Wayne to love this road and Wendy to be happy with it and not worry about sliding off. He wanted it to be 12 feet so a fire truck would have access to her property. He didn't think 10 feet was legal for a fire truck access. He wanted to fix the problems.

Public comment opened:

Wayne Treweek, the neighbor to the north, said the mess the applicants made had to be fixed. He didn't give permission to mess up his property. His concern was that his property be brought back to a condition that was workable. If they didn't get the road done, he wanted his place cleaned up.

Sharon Treweek referred to the picture with the cars, where Frank asked about a trailer earlier. To go in there at an angle like that, you had to go through the parking that she and Wayne used. They used to have a snowmobile trailer out there. Somehow in the construction it ended up with a big hole in it. They didn't park it up there anymore. [The road] had to go through the corner of their property where they had some rentals and where the renters parked. How would they park there if a driveway went right through it? That needed to be clarified too.

Wayne had a question about the road footings. This would be in coordination with what they did on the highway? He hadn't seen this on a slope of that steepness. Josh described cutting a horizontal flat bench, then g-tech style fabric, then fill, then you did it again. That was tied to the face to hold it all back. The sheer weight of the wall helped hold back the face. They looked at the global stability of the slope underneath it and it would hold. The geotech-style fabric connected to the face. Gravity and the weight of the fill held it.

Steve asked how people who used this [new] road to access the Galloway cabin would park and get up to the cabin. Rob S described different things they could do. One option to access from strictly within the easement and within the new road was to hold up the first section of the new road a little higher and put an actual break in the wall that would allow you to come in and angle your car through the break and up the slope a bit. It wouldn't be a nice, big, flat parking lot but there were options for that. Sharon checked that it wouldn't take part of their property. Rob S said it wouldn't if it came off the road. Steve added after the property line. Those weren't the Board's issues to work out.

Nathan Amaral lived on lot 6. He was left out of the notification. He'd heard about it from Wendy and from the notice posted on Wayne's property. [Editor's note: lot 6 was not directly adjacent to applicant's lot.] He showed a newer plat of the property. He had an easement across lot 7 (Wendy's property). He described history of the properties, easements and ownerships. His easement on Wendy's property lined up directly with the existing road that had long been there. The Galloway's cabin had additions. The deck was added towards the road. There'd been activity on [Nathan's] property since 2006. He was required by the County to prove that the existing road was usable by a fire truck. The Galloways added to their house towards the lake and to the north. They tried to build further into the road and he told them they couldn't do that so they brought it back a few feet to where it was now. Their intent was to build the road and force Wendy and him to use a road they didn't want or need. He had a straight shot to back up his trailers using the existing public road since he didn't have a turnaround spot. The way it was now and the way it was proposed, it would wind and it would take him a long time to back up. It clearly wasn't beneficial for him nor did he have an intent to reroute his easement on Wendy's property to attach to this road or give up his legal right to use the existing easement that had been there since 1945. He wanted to see the road put back together. He had pictures of how it normally looked that showed weeds. (See attachments to minutes in the March 2017 meeting file for handout.) He suggested that they could pave the existing road for less dust and noise and for easier maintenance rather than building an expensive road. They could take the porch out and build up. He used his land appropriately to accommodate his situation. He didn't force others to accommodate to him.

Wendy Miller said that the situation was emotional, with family history. It had been a quaint, quiet neighborhood. They'd like to see it return to that state. Both Wendy and Nathan had active, growing families and they were busy and back and forth [on the road]. All three bought in 2006. The Galloways knew they were moving up with active, growing families. She found it bizarre and uncomfortable to drive 18 inches from someone's house front and 3 feet from their bedroom window. For the road, she wanted to see them do what the County had originally asked. This was to come back into compliance with the hillside disturbance they caused, with retaining walls to restore the hillside and removing the metal pipes that were stuck in at all different levels and left that way for 6 years.

That wasn't to be construed as Wendy allowing them to disrupt her property. Where the newer road met up with her property, they dug into that. She did give them permission

originally to attach the two. What was described to her as what would happen was not what they did. She regretted if she seemed distrustful but she'd been bitten too many times. She built back up the area that was previously disturbed on her property. It was right next to her parking and she could no longer safely back out to turn around because of the slope. She added some trees to help stabilize the embankment that the neighbors had created. Neither she nor Wayne had received an offer of compensation. They had to pay to have the original road regraded after it was torn up. They gave the applicant three months to make it right but the applicant had left so they had to pay to restore the easement road. They didn't intend to go backwards on that matter without at least a written agreement between the three of them plus the Amarals.

Wendy touched on other problems. If something was allowed to be done, they were not going to have their access blocked or altered. She trusted engineers to have a safe and stable product. They spoke about bringing the level of it up. She wasn't worried about what they did as long as it stabilized the embankment. If they were to bring up the lowest part 3 or 4 feet, it would still make for a driveway, that right now is straight and level, to be very sloped and come back up. She didn't think that benefited them. Nathan thought the applicants wanted the road to go down so it didn't interfere with their view. He and Wendy both built up to get the view.

Wendy said the little road went right in front of her house too. She knew that when she bought it. That was a reality she dealt with. Bringing the road up 3 or 4 feet at the lowest part wasn't going to get close to bringing it up to the grade to make it a straight, level road. Wayne said the road to his house had been there because that was the utility easement to get to Edgewater Lane. The road had been there since 1945. There was no easement for it until [inaudible]. Wendy said it was a public road up until it reached her property. Frank verified with Wendy that it wasn't publicly maintained.

Bob S thought it sounded like they could work something out. Wayne had been great. Wendy, Robin and Bob had been upset, so it had been difficult to talk. He knew they wanted it flush but he thought the engineers would find that structurally impossible. Frank thought it might be possible but exceedingly costly. Bob S said they hadn't suggested the others pay. He commented that Nathan had another easement through another property that somehow disappeared. Nathan didn't have an easement through their property but they weren't going to deny access. He had an easement through Wendy's property. He needed an easement and Robin & Bob S didn't have the peace and quiet they needed so Bob S thought they could work something out. They had to build a different road so the lights didn't shine into their bedroom. The house was in the same footprint as the house of Wendy's sister had been. They kept it low, because they didn't want a McMansion, and esthetically pleasing.

Frank returned to the slope disturbance issue. Wendy confirmed with Rob E that he visited on 2/16/17 to put up the notifications. Frank confirmed with Rob E that the adjacent property owners were notified. Rob E talked about the placement of notice per East Shore Zoning District regulations. Wendy clarified that she was asking about the Galloways, the Treweeks and slope disturbance for the road per her recent conversation

with Rob E. After speaking to the County attorney, Rob E understood that if you were going to disturb slopes of the neighbors, approval needed to be granted prior to that. Whether or not you could repair and maintain the existing road on the plat was a question for an attorney. This conditional use was specifically to disturb slopes over 25% on their property.

Wendy checked that if she or Wayne agreed to the Galloway's road change plan, neither would need a permit for the small square footage. Rob E clarified they wouldn't need a permit if it was under 500 square feet of disturbance. Jacob stated there wouldn't be a permit issued for work to be done until both north and south adjacent property owners agreed to the work or the work remained only on the Galloway property. Frank said this was a condition that would be added. Jacob stressed that they would not permit the Galloways to do work on Wendy's property or on Wayne's property without the property owner's permission.

Nathan asked why he didn't come into this when he had an easement across Wendy's property. He was concerned that he hadn't received notice. Jacob pointed out that Nathan was involved and informed, and that staff had publicly noticed this as the law required. There was further discussion on details of the posting of the notice.

Wendy mentioned she had pictures of the original building. She wanted to make sure their road wasn't messed up. Frank and Steve agreed they didn't need more pictures.

Public comment closed.

Steve asked if the parties could agree and the Galloways decided not to put in the new driveway, they would be required to fix the work that was done without a permit. Jacob said it needed to be cleaned up whether a new road was put in or it was resloped to its original grades. Rob E added it required the conditional use permit to disturb the slopes. Jacob said the original disturbance was not approved or permitted. Steve said if they decided not to do a new driveway, they needed to revegetate and recontour to as close to the original slopes as before. Did they need a permit to fix that? Rob E replied they applied for both conditional use and a zoning conformance although the zoning conformance would wait on the conditional use. They also paid after-the-fact fees. Steve confirmed with Jacob that they had to fix the mess.

Jacob said since the County became aware of this (in 2011 per Rob E), the County's effort has been to get this road put in correctly or get the slope back to where it was. That was what the staff wanted to see. Frank said the new road would take care of that. Rob E acknowledged that or whatever sort of agreement they worked out. Steve wanted to make clear that if the involved parties didn't come to an agreement and the Galloways decided to live with the old road, they still had to fix the mess. Mary said they had to bring it back to the way it was. Frank asked if the cleaning up included adjacent properties. Jacob thought that even though this was damage already done, they would need approval from the neighbor before it could be cleaned up. That should be part of the overall project. Frank asked about the additional condition, which Jacob gave, with

tuning from the Board: *Prior to the zoning conformance permit being issued for the work, [staff] want a written agreement from the adjacent parties (Treweek, Galloway and Miller) of their approval of the work OR the work is required to be only on the Galloway property.*

Bob S suggested adding if Wayne's property would be disturbed, fixed or the road would be incorporated there, either in his easement or his property. The Reed [Miller] property might not necessarily be touched. Steve said that could be the agreement or within the agreement. Wendy would need to agree to the fact that they wouldn't be fixing her property. Frank said they'd leave it open for negotiations. Jacob added [this would be] based on the approved plans submitted. If Rob S submitted a plan showing nothing happening on the Miller property, then she wouldn't have to sign off on it because it wouldn't impact her. If there was impact, then she would call the Planning Dept. and they would talk to the Galloways about it.

Frank refocused the group on the slope disturbance issue that was before the Board as talk about other items broke out. Steve said if they agreed to allow the slope disturbance, it didn't mean that the applicant could start work. The applicant still had to get a zoning conformance permit. Before he could get that, [the neighbors] had to agree to whatever properties were involved. Frank said there were still the conditions and terms. Jacob thought they should put it in one condition *that either an agreement on the road is reached, the road work remains only on the Galloway property or if they decide not to do that, then the slopes will be returned to their original slope.* Bob S mentioned the Treweeks. Jacob added something along the line *of all disturbance would be returned to what the original conditions were on approval of land owners.*

Motion made by Frank Mutch, and seconded by Steve Rosso, to approve the conditional use for slope disturbance subject to the findings, conditions and terms, including the additional ones mentioned. Motion carried, all in favor.

A short break was taken.

MILLER CONDITIONAL USE—EAST SHORE (6:44 pm)

Rob Edington presented the staff report. (See attachments to minutes in the March 2017 meeting file for staff report.)

Frank checked with Rob E that the shed needed to be moved out of the setback to bring it into compliance. Steve asked for clarification on XII.B on pg. 3. Jacob explained that staff determined whether or not a usage qualified as a home occupation. If Wendy disagreed with what the staff determined, she could appeal to the Board.

Wendy Miller wasn't sure what information the Board wanted or needed from her. She brought one of the sinks she produced and some of the products she used. She wanted to address and allay those concerns about toxicity. She described her product made from concrete and her process. So far she'd gone through a couple of bags of concrete per year. She described the stains and metallic highlights which were concrete products from

a place in Kalispell. The clear coat was a common nontoxic 2-part epoxy resin. It was often used on bar tops. It has no VOC's (volatile organic compounds). The resin and the stains had practically no scent. She invited the Board to look at or smell these components. She drilled the hole with an electric drill and a hole saw so there was no heavy equipment. The sanding was done by hand or with an electric drill with sanding attachments or with an orbital sander on occasion. She asked the Board for their questions or concerns.

Mary asked for clarification on the amount of cement used per year. Wendy said these were 90-pound bags of cement. She picked them up in her van. She made maybe 5 or 6 things per year. She'd sold 6 items so far. She had a lot of castaways that hadn't worked out. She clarified for Don P that she worked alone. She introduced Lew Summerfield, her significant other. He helped finish the inside of the studio but not with the [products]. He was neither an apprentice nor an employee. She bought the used shed from a friend. She hadn't finished items this year since she'd been working on the shed.

Steve asked when the edge of the leaf was cut in the process. Wendy said that was within the [initial] 8-hour window with a knife. She gave more detail. Mary asked if the trimming and sanding was done inside or outside of the shed. Wendy replied it would be done inside now that she had the shed. Previously, she had to do some things on the porch. The concrete dust from the sanding was messy. Most was done by hand. Frank asked a question on the product and she gave more details illustrated by pictures that she handed out, and she answered questions from the Board members. (See attachments to minutes in the March 2017 meeting file for handout.) She would be working in the shop, now that she had the shed. It was fully insulated with a shop heater. She still needed to build a case to put [the items] in for a dust free space and so she wouldn't have to heat the whole shed. She had no problem moving the shed out of the setback and had another spot in mind 175 feet from the Galloway property line. She showed it to Rob E and he had agreed it would [work]. Rob E said there was a creek nearby. He didn't know if she'd need a permit from the Conservation District. Wendy said it was 125 feet from the Amaral property line. She planned to move it as soon as winter died.

Public comment opened:

Bob Streitmatter said that drilling or sanding cement created toxic dust. The creek supplied drinking and bathing water to both households. How close was this to the creek? He had video of Wendy covered with dust and of her dumping a wetvac of dry concrete onto their property. Toxic waste was his first and foremost concern. He was concerned about it getting into the water and the lake. Traffic was another concern. A successful business would generate more traffic. Traffic had already greatly increased with the change to full-time residency, hence the issue of the road and people crossing the property. He noticed probably one or two UPS/ Fed Ex trucks per week and thought that might increase and impact the residential area. He didn't see how she could follow the proposed guidelines. Odors, dust and toxic things were apparent to his household. Moving [the shed] to the other side might change things a little but how to dispose of the waste would then be a concern. It was a slap in the face that she would dump waste on his property when she didn't think he was looking so he now felt distrustful. He had

concerns that improper disposal and dumping into the creek would happen. Waste and traffic were his major concerns.

Steve confirmed with Bob S that he was talking about the concrete. Bob S mentioned grinding the concrete. Steve clarified that Wendy said it was cut while the cement was still wet. Bob referred to the dust he saw being dumped from the wetvac. Frank was interested in what was being dumped and in what quantities. Bob offered to show a video. Jacob declined. Bob described the silica dust at the bottom of a wetvac that was dumped properly into a garbage bag. The silica from the filter was dumped onto his property. This was more of a manufacturing process or entity than what he thought of as a hobby.

Mary thought if it took 8 hours to work on one sink, and few had been done, you wouldn't be able to manufacture more in the current environment without more employees or a bigger building, in which case Wendy would probably have to go through this process again and likely be denied as a manufacturing business. Frank said you'd move to a commercial location when you got to that point. Wendy said she couldn't teach someone how to do this. Her goal for full production might be 20 per year. Mary clarified that her point was it seemed doubtful that Wendy could produce in large quantities under the current conditions.

Rob E suggested the dust in the video might be sheetrock dust from finishing the shed rather than dust from production of the sinks. Wendy thought that was likely. She hadn't made a sink since the cameras had been up. Steve highlighted a condition that prior to the zoning conformance performance being issued, the applicant would be required to demonstrate compliance with requirements of the Environmental Health Dept. Would she have to present her manufacturing plan to Environmental Health? Rob E said no. Environmental Health already commented and no permit was needed. If the shed was connected to the wastewater system, she would need to get an alteration permit. He confirmed there was no evidence of a water system or drain in the shed.

Steve asked about a creek setback. Rob E said that wasn't a requirement of the zoning or under [the Planning Dept.'s] review. It was the applicant's responsibility if she needed a permit. Wendy said she didn't plan to encroach on the creek in the new location any farther into the embankment that was already there. The land where she would put the shed was a burn pile/ parking area. Lew S said the shed was 25 feet from the creek with an undisturbed natural berm that was 12 feet high. Part of it was used as a barrow pit for road building.

Steve checked that the water system was uphill from the shed location. Wendy replied there was a cistern from where the water for her house and the Galloway property was pumped. Steve asked if dust were somehow to get into the creek, would it be below or above the cistern location and if it could get into the cistern. Lew said no. This was glacial till and quartzite cobble and the placement was down-gradient, so it would filter. The first place it would hit was Hwy 35. Steve summarized it was unlikely to contaminate the cistern. Rob E said the water supply was located approximately 1000

feet up the hill so there would be no impact there. The silica dust was hazardous. The non-dust form was used in pool and aquarium filters, per google search. For toxic ingredients in a house, it depended on how she discarded the ingredients.

Frank asked how much of a sack of cement or mortar was used per sink. Wendy said [the amount] came out to a couple of gallons in volume when it was mixed. Frank said you'd have a little bit of dust, dirt and debris. You had a shopvac filter that might be clogged. He talked about how he dealt with that. It didn't seem a major disposal issue. He and Wendy talked about home businesses enhancing the state. Bob S agreed she had an awesome product. If she disposed of it properly, he couldn't have an issue about that. He and the group touched momentarily on electrical and safety.

Frank hoped some communication and maybe some healing had happened with the last two agenda items. Jacob said they had two property owners, both who built in violation. He clarified the two projects were both after the fact. Both owners were cleaning things up, which was a positive thing. In the East Shore zoning district, you could build a fence without a permit, which might be a solution.

Motion made by Steve Rosso and seconded by Frank Mutch, to approve the conditional use for this home occupation along with the findings of fact and conditions. Motion carried, all in favor.

Motion made by Frank Mutch, and seconded by Mary Jensen, to table the last items (Board of Adjustment Bylaws, Minutes, Other Business). Motion carried, all in favor.

Frank Mutch, chair, adjourned the meeting at 7:30 pm.